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CLERK, U.S. DISTRICT COURT
N.D. CALIF.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Carl A. Wescott,)	Case No. 17-cv-06271-EMC
Plaintiff)	
----- versus -----)	PLAINTIFF'S OBJECTION TO REPLY
Eric Reisner and)	EVIDENCE IN DEFENDANT CONDON'S
Kerry Condon,)	REPLY BRIEF IN SUPPORT OF HER
Defendants)	MOTION TO DISMISS FOR LACK OF
And DOES 1 to 20,)	PERSONAL JURISDICTION
Defendants)	Expected hearing date: May 24 th , 1:30 pm

Plaintiff Carl A. Wescott, proceeding *pro se*, pursuant to Northern District of California Local Rule 7-3 (d) (1) objects to new material in Defendant Condon's Reply Brief and in support of his Objection and in compliance with Rule 7-3 (d) (1) he offers this concise Memorandum of Points & Authorities.

On April 7, Ms. Condon filed a Motion to Dismiss based on lack of Personal Jurisdiction and attached a Memorandum of Points & Authorities ("MPA") supporting that Motion. She argued that she had not availed herself of the privilege of doing business in California and that as a non-signatory to the Partnership Agreement ("the Agreement") Plaintiff entered into with her

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1 husband, Eric Reisner she was not bound by the forum selection clause therein. (see specifically
2 pp 6-7 of MPA). Ms. Condon attached a declaration in which her only assertion was as follows:

3 7. The complaint files in this action mentions a 2009 partnership agreement
4 between the Plaintiff, Carl Alexander Wescott and Eric Reisner. I was not a party
5 to this agreement nor was I a signatory to this agreement.

6 Neither the MPA, nor the declaration by Ms. Condon specifically challenged the
7 *existence* of the Agreement or the inclusion of a forum selection clause. Yet her Reply brief
8 devotes its first three pages to this new argument that materially expands or contradicts the
9 evidence Ms. Condon presented in connection with her initial MPA. Indeed, given Ms. Condon's
10 initial filing the Plaintiff was not on notice that she was challenging the terms of the Agreement.
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12 Federal practice is consistent with California practice in not requiring the Plaintiff to
13 attach a copy of the complaint on which his complaint is based:

14 To the extent Defendant complains the alleged contract (if written) is not attached
15 to the complaint, "while it is certainly good practice to attach a written contract to
16 a plaintiff's complaint for breach of contract where one exists," the Federal Rules
17 of Civil Procedure do not explicitly require attachment of a written contract to the
18 complaint. *Ferrell v. Addington Oil Corp.*, No. 2:08-CV-74, 2010 WL 3283029,
*4 (E.D. Tenn. Aug. 18, 2010)

19 The Plaintiff is unable to locate a copy of the contract at present but he could have
20 focused his sworn declaration on the existence of the Agreement and the specific inclusion of a
21 forum selection clause therein had Ms. Condon included her challenge to both in her initial
22 sworn declaration. The Defendant appears to have set the Plaintiff up for a bit for an ambush in
23 this regard. Rule 7-3 (d) (1) permits Objection but not further argument. If the Court would
24 benefit from further argument or a more specific declaration, the Plaintiff would be happy to file
25 a Sur-Reply (though the Plaintiff will be away from San Francisco until March 23rd).
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1 Alternatively and conjunctively he can amend to plead the course of dealing, content of the
2 contract and other related facts if the Court believes it to be necessary to withstand the
3 Defendant's assault.

4
5 The Plaintiff would like to observe good practice and believes he will locate --- or obtain
6 in discovery – a copy of the relevant document. Until the filing of Ms. Condon's Reply, he had
7 not been on fair notice that the Defendant challenged the existence of the Agreement or the
8 inclusion of the forum selection clause. As a *pro se*, the Plaintiff is unclear as to whether Courts
9 might consider new arguments put in to a Reply to Opposition to a Motion. If so, before the
10 Court rules based on that new challenge and argument, the Plaintiff respectfully requests a fair
11 opportunity to respond in detail whether by Sur-reply or amendment.
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16 RESPECTFULLY SUBMITTED

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20 Carl A. Wescott, pro se 5/16/2018
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